IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS No.4443, 4385, 4381 & 4445 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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HALAR VIBHAG VIVIDH KARYAKARI SAHKARIMANDLI LTD.

Versus

K.J. JOHSI

Appearance:

1. Special Civil Application No. 4443 of 1992

MR BS PATEL for Petitioner No. 1-2

MRS RANJAN B PATEL for Petitioner No. 1-2

NOTICE SERVED for Respondent No. 1

MS DEVANI, Ld. AGP for Respondent No. 2

MR HC PATEL, Ld. AGP for Respondent No.2 in SCA 4445/1992

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 07/08/2002

ORAL JUDGEMENT

1. In all these petitions, common questions are involved and the facts are more or less similar and, therefore, they are being dealt with together.

2. Heard Mr.B.S.Patel, learned Counsel appearing for the petitioners in all the matters, Ms.Devani, learned AGP appearing for respondent State in SCAs No.4443, 4385 and 4381 of 1992 and Mr.H.C.Patel, learned AGP appearing for respondent State in SCA No.4445/1992.

3. In all these petitions, the petitioners are challenging the interim order of liquidation passed under Section 107(1) of the Gujarat State Cooperative Societies Act (hereinafter referred to as "the Act").

4. The short facts of the cases are that the petitioners are Cooperative Societies duly registered under the provisions of the Act. It is the case of the petitioners that the orders under Section 107(1) of the Act for operating the interim order of liquidation are passed without giving any opportunity of hearing to the petitioners. The petitioners have relied upon the decision of the Division Bench of this Court in the case of "Apeksha Cooperative Bank Limited Vs. District Registrar and Others" reported in 1993(2) GLH, 861. The contention raised on behalf of the petitioners is that no opportunity of hearing has been given as observed by the Division Bench in the aforesaid judgement and, therefore, the order is in breach of the principles of natural justice and hence is void.

5. The learned AGPs appearing on behalf of the respondents, have not been able to show any documentary evidence regarding the opportunity of hearing. However, it has been submitted that in the impugned order, there is a reference to the show-cause notice dated 20-3-1992. It has been contended that since the record shows that show-cause notice was given, it may be that the petitioners might not have availed of the opportunity and hence the order cannot be said to be in breach of the principles of natural justice.

6. When the matters came up for admission, this Court had granted stay against the operation of the impugned order and as a result thereof the matters are at a stage of interim order of winding up. A period of about 10 years has passed and it may be that there may be financial improvement or deterioration of Societies concerned during this period and, therefore, matters will have to be examined from that view point, keeping in view

the aforesaid aspects.

7. The contention of the petitioners regarding the opportunity of hearing, if accepted on the face value, it appears that it is not clear from the record of the impugned order as to whether any hearing was given to the petitioners or not. However, there is a reference to the show-cause notice, but after show-cause notice, whether any reply was submitted or any opportunity was given is not apparent from the documents produced on record. That apart, even if the hearing is given, it appears that the order passed is a mechanical exercise of the power and stereotype order and the order is not at all reasoned order and no reasons are recorded for the exercise of power under Section 107 of the Act.

8. In above view of the matter, the order passed by the District Registrar for passing interim order of winding up cannot be sustained in the eye of law, more particularly in view of the judgement of the Division Bench in the case of "Apeksha Cooperative Bank Limited Vs. District Registrar and Others"(supra). However, at the same time, since the matter has remained pending for about ten years on account of the stay granted by this Court against the operation of the interim order of winding up, appropriate directions would be required to be given so as to enable the Society to put forward the case of improvement or deterioration or latest financial position of the Society before the exercise of the power for appointment of the liquidator is intimated by the registrar concerned.

9. In view of the above, the interim order for appointing liquidator under Section 107 of the Act is quashed and set aside on the ground of breach of principles of natural justice. However, it is further clarified that it will be open to the respondent authority to consider the matter afresh under Section 107(1) of the Act for appointing liquidator after giving opportunity of hearing to the Society concerned and keeping in view the principles laid down by the Division Bench in the case of "Apeksha Cooperative Bank Limited Vs. District Registrar and Others" (supra). It is also clarified that while considering the matter as on today for the purpose of passing any order for winding up, the authority shall also take into consideration the financial position and the affairs of the society at the time when the matter is considered afresh for the purpose of passing interim order of winding up.

10. The petition is allowed to the aforesaid extent.

Rule is made absolute accordingly. There shall be no order as to costs.

7-8-2002 (Jayant Patel, J.)

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